UNITED STATES DISTRICT COURT WESTERN DISTRICT OF TEXAS WACO DIVISION

WSOU INVESTMENTS, LLC D/B/A BRAZOS LICENSING AND DEVELOPMENT,

Plaintiff,

v.

HEWLETT PACKARD ENTERPRISE COMPANY,

Defendant.

Civil Action No. 6:20-cv-00726-ADA

JURY TRIAL DEMANDED

FILED UNDER SEAL

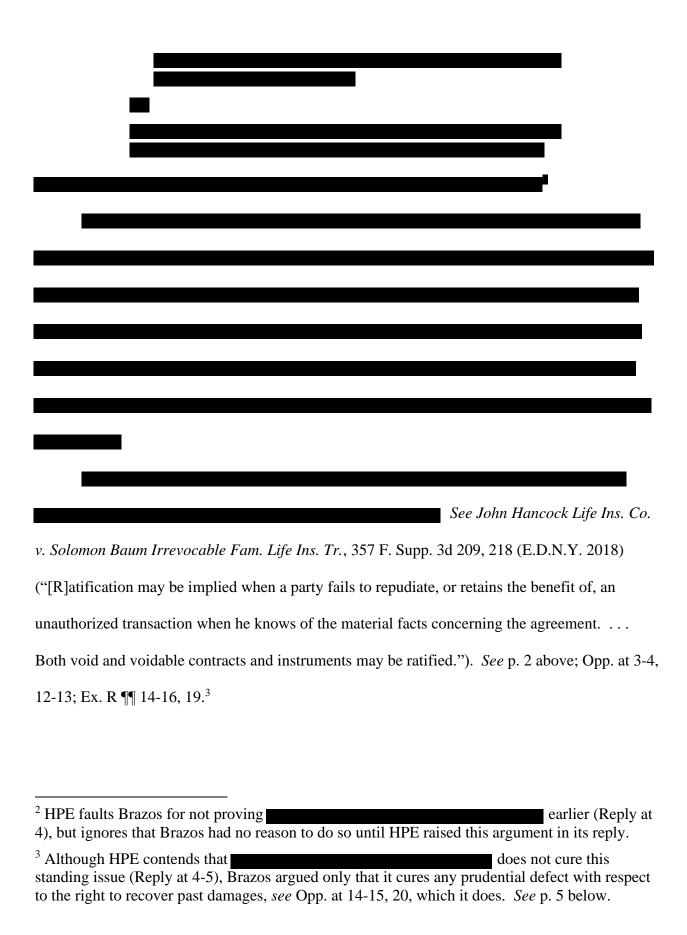
BRAZOS'S SUR-REPLY IN OPPOSITION TO HPE'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION PURSUANT TO FRCP 12(B)(1) (DKT. 59)

I.	BRAZOS HAS ARTICLE III STANDING				
	A.	Brazos	and the Assignment		
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is irrelevant. See Reply § I.C.

¹ HPE expressly concedes that

B
HPE raises a new argument not made in its Motion
. Reply §I.B. New
arguments in a reply brief are not proper. See Mikel v. Carrington Mortg. Servs., LLC, No. 1:16-
cv-01107, 2019 WL 4060890, at *5 (W.D. Tex. June 25, 2019) ("It is the practice of this court
and the district courts to refuse to consider arguments raised for the first time in reply briefs.").
But HPE is also wrong.



Ι.	BRAZOS HAS STANDING TO SUE FOR PAST INFRINGEMENT OF THE ASSERTED PATENT
Motic	HPE's reply cites only the same authorities as its on, <i>see</i> Reply at 8-9; Mot. at 8, 12, which <i>support</i> this conclusion. <i>See also</i> Opp. at 16. HPE's contention that Amended Schedule B3 should control (Reply at 9) is misguided.
PPA,	In any event, Amended Schedule B3 is <i>part</i> of the and the documents must be considered together. <i>See, e.g., Minco, Inc. v. Combustion</i>
ıssigı	g, Inc., 95 F.3d 1109, 1118 (Fed. Cir. 1996) (only some agreements in a series expressly ned the right to past infringement, but "the entirety of the agreements establish[] that the assignment clearly conveyed the right to sue for past infringement").
	HPE's claim that the PPA is not (Reply at 9) also fails.
18; <i>se</i> admit	Opp. at 17 ee, e.g., Speedplay, Inc. v. Bebop, Inc., 211 F.3d 1245, 1253 (Fed. Cir. 2000). As HPE es,

Finally, contrary to HPE's suggestion, which is unsupported by any citation to authority,
Any remaining doubt that Nokia applicitly transformed the might to any for most democras in
Any remaining doubt that Nokia explicitly transferred the right to sue for past damages in the PPA is obviated by the
Lore HDE?
Last, HPE's contends, again incorrectly, HPE
misreads the document.
4 This issue of one of any dential an etatatom standing and thus may be assed if accessory of any
⁴ This issue of one of prudential or statutory standing and thus may be cured, if necessary, after an action is filed. Opp. at 14-15. HPE's reply restates its position, but offers no controlling authority showing that the right to recover past damages implicates constitutional standing.
⁵ Brazos learned from reading HPE's reply brief that, due to a vendor error, certain pages were inadvertently omitted from its production to HPE of Upon learning of this, Brazos promptly produced the missing pages to HPE.

Dated: October 29, 2021

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing document was served upon all counsel of record via the Court's CM/ECF electronic filing system in accordance with the Federal Rules of Civil Procedure on October 29, 2021.

/s/ Raymond W. Mort, III
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